HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 19752 of 2006.

DATED: 26-09-2006

Between:

Ch.Ramesh Kumar and others

…Petitioners

and

The State of Andhra Pradesh, represented by its Secretary, Department of Endowments, Hyderabad and others.

…Respondents.

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 19752 of 2006

ORAL ORDER:

Respondents 4 and 5 are religious institutions; respondents 7 and 8 are the Board of Trustees of the aforementioned institutions; respondent No.6 is projected as the Executive Officer, in-charge of both the institutions and the respondents 1 and 3 are claimed to be the hierarchy of officers of the State and of the Endowments Department who supervise the management and regulation of the secular affairs of these institutions in accordance with the mandate of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') and the relevant statutory rules thereunder being the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short 'the Rules').

The respondents 4 and 5 institutions, the petitioners claim, own agricultural wet lands of several extents in Indupur, Alluru and North Mopur Villages of Nellore District which have been endowed by devotees for the benefit and sustenance of these two religious institutions. Apart from the land specified in paragraph 2 of the writ petition, the petitioners assert, these institutions owns other lands. The petitioners claim to be Hindus, residents of North Mopur Village and devotees of the 4th and 5th respondent religious institutions and regular worshippers thereat. They assert to be interested in the

welfare and weal of the religious institutions. The petitioners also assert that the land owned by the 4th and 5th respondent institutions are highly fertile, suitable for cultivation and capable of yielding high income to these religious institutions. The petitioners further assert that the leases in favour of the current occupiers of these lands expired a long while ago and that some of the villagers had approached this Court claiming to be cultivating tenants. They filed Writ Petition Nos. 19132 and 19135 of 2006 seeking stay of an auction that was proposed by the management on 18-09-2006 for grant of leasehold rights to the lands of these institutions. The said writ petitions are stated to have been dismissed on 15-09-2006.

The petitioners assert that the Irrigation authorities had notified that water would be released from 25-09-2006 and therefore the agricultural season in respect of the lands of the respondents 4 and 5 would commence. The petitioners believed that the official respondents would conduct auction as scheduled on 18-09-2006, so that a fair lease amount is received, for the benefit and sustenance of the respondents 4 and 5 institutions. However, as no auction was held despite the dismissal of the writ petitions filed by a person claiming to be the cultivating tenant, the petitioners are before this Court questioning the abdication of the obligations, statutory powers and responsibilities by the official respondents in not acting in the best interests of respondents 4 and 5, by conducting auction for grant of leasehold rights of the lands of these institutions for a period of three years i.e., from 2006-07 to 2008-09. The petitioners also assert a personal interest in the auction process. They claim that they had gone to the notified place on 18-09-2006 to participate in the auction along with necessary documents including their pattedar pass books. They claim that the other villagers, in large numbers, had gathered to participate in the auction. But the 6th respondent instead of conducting the auction had published a notice stating that the auction process is

adjourned in respect of the lands of both respondents 4 and 5 institutions. The 6th respondent is alleged to have stated that the auction is adjourned for some undisclosed reasons. On the petitioners' insistence, it is alleged, the 6th respondent did not reveal the reasons for the adjournment of the auction, but indicated that he was directed by the 3rd respondent to postpone the auction, as the 3rd respondent received certain instructions from the 2nd respondent. The petitioners then assert to have approached the 3rd respondent who is alleged to have stated that he had instructions from the 2nd respondent and therefore directed the 6th respondent to postpone the auction. In spite of their request to disclose the reasons for the postponement of the auction, no copies of the orders passed either by the 2nd or the 3rd respondent were furnished to them.

In the aforesaid factual matrix and on the basis of the allegations and assertions in the writ petition, briefly adverted to above, the petitioners have filed this writ petition, in substance, for a direction to the official respondents to conduct auction for grant of leasehold rights of the agricultural wet lands of the 4th and 5th respondent religious institutions for the years 2006-07 to 2008-09.

The Learned Government Pleader for Endowments, on instructions, states today that as certain "sitting tenants" had represented to the 2nd respondent that there is standing crop on the lands in their occupation, the 2nd respondent had directed the 3rd respondent to ascertain the factual position and report to him and in view of the fact that information is still to be received by the 2nd respondent from the 3rd respondent on this account, the conduct of the auction for grant of leasehold rights was adjourned pending a decision by the 2nd respondent as to the future course of action on the basis of representations been made by "sitting tenants".

Writ Petition Nos. 19132 and 19135 of 2006 were filed by individuals claiming to be in possession of the land of respondents 4 and 5 institutions since 1985 on the basis of oral lease. Both the petitioners raised cultivation during the current year also and assert an obligation by the managers of the respondents 4 and 5 and the Endowments department, to continue their occupation, extend their existing leases and treat them as small farmers too. Those writ petitions were dismissed by this Court -- Writ Petition No. 19132 of 2006 was dismissed by the judgment dated 15-09-2006 (three days prior to the proposed auction on 18-09-2006) holding that the petitioner therein had not established that he is a lawful tenant. The learned Single Judge of this Court had held that the provisions of the Act and the statutory Rules do not vouchsafe, enable or countenance grant of oral lease by any authority under the Act including the Commissioner of Endowments, or even the State Government for that matter. Rule 7 of the Rules ordains that all leases of agricultural lands of religious institutions shall be by public auction. Proviso to Rule 7 (1) of the Rules enacts that the competent authority may, on a request made in writing by the Executive Authority, permit the lease of any property otherwise than by public auction, if he is satisfied, for reasons to be recorded in writing, that the suggested procedure is necessary and in the interests of the institution or Endowment (emphasis supplied). It was not the plea, assertion or demonstration by the petitioner that lease was granted to him in the interests of the institution, otherwise than by public auction. It was not even his plea that there was a lease executed in a manner known to law. Some oral clandestine assurances by some unknown entity of antiquity is pleaded as the authority for his occupation of the land. In the aforesaid factual circumstances, this court had characterized the claim of the writ petitioner in Writ Petition No. 19132 of 2006 (to be a lawful cultivating tenant of the lands of the 5th respondent institution to be extravagant

and misconceived, declaring the petitioner therein to be an unauthorized occupant of the land in question, to be not a cultivating tenant within the meaning of the said expression under Section 82 of the Act and therefore disentitled for the benefit under Section 82 of the Act and has further held, in conclusion, that he had no *locus standi* to assail a notification issued by the management of the temple proposing to conduct a public auction for grant of leasehold rights of the institutions' land).

It is rather strange that respondents 2 and 3 are stated to have considered a representation of encroachers for exercising discretion by these respondents to save their standing crop. The raising of a crop by encroachers is support of a plea for stalling a public auction for grant of leasehold rights of the lands of religious institutions, respondents 4 and 5 is a speculative misadventure and not an act of prudence or a lawful act. It was purely an imprudent adventure that ought to have been rejected by respondents 2 and 3, who hold offices for proper management and safeguarding of lands of Endowment institutions. Respondents 2 and 3 may not have conflicting loyalties, partly committed to the endowments institutions welfare and partly to weal of encroachers. The A mandate of Rule 7 of the Rules is clear, unequivocal and linear and any defiance or deviance from the mandate of the Act or of Rule 7 of the Rules would render any officer of the Endowments department or any manager of a Religious or Charitable institution ineligible to be continued in any office having nexus with the safeguarding of endowments institutions. This court is constrained to observe that in case of Endowment officers feel charitable towards any occupier, they are always at liberty to indulge in charity out of their own funds or assets and not from those of the endowment institutions. These observations are made in the context of the submissions by the learned Government Pleader for Endowments that the current occupiers of the lands of respondents 4

and 5 institutions had submitted applications for their continued possession on account of standing crop and responding to the representations and in the process of considering the same, the respondents 2 and 3 have orally enabled postponement of the auction, infinitely.

The safeguarding of the imprudently, extravagantly and unlawfully raised crop, if any by encroachers of lands of respondents 4 and 5 institution is not at all a relevant criterion to be considered by respondents 2 and 3. It would not be a criterion which in any way benefits the institutions, namely respondents 4 and 5. The singular purpose which discretion, power and authority are conferred on the respondents 2 and 3 is the material welfare of endowment institutions, any other consideration would be an extraneous consideration which cannot be taken into consideration by the respondents 2 and 3. Abuse of the statutory discretion conferred on the official respondents under Rule 7 of the Rules cannot be sustained or countenanced.

Sri Lakshminarayana Reddy, the learned Advocate appeared at the hearing today purporting to represent the interest of persons who are encroachers on the agricultural lands of respondents 4 and 5 institutions and pleaded that his clients had raised paddy crops this year and had made representation to the respondents 2 and 3 to continue them on an enhanced lease and permit them to harvest the crop they had raised this year. For the reasons recorded hereinbefore, this plea on behalf of the encroachers does not commend acceptance by this Court and for reasons alike. A further plea by Sri Lakshminarayana Reddy is that respondents 2,3 and 6 to 8 have proposed auction only of certain lands under the occupation of certain encroachers and have not proposed to auction all the lands of the respondents 4 and 5 institutions which are all under occupation of persons with similar factual background and profile as these encroachers. Fairly

Sri Lakshminarayana Reddy suggests that all the agricultural lands of respondents 4 and 5 institutions are under the occupation of encroachers and not held by any lawful cultivating tenant in a duly drawn lease deed executed in accordance with the provisions of the Act and the statutory Rules. Even if this be true,

Sri Lakshminarayana Reddy's clients are not entitled to any relief as contained in their representation to respondents 2 and 3. The conduct of respondents 2,3, 6 to 8 favouring some encroachers does not entitle other encroachers to claim equal treatment. Official respondents who violate the law or act in transgression of their public offices may be proceeded against for such transgression but cannot be mandamized to extend the illegality to other persons who are seeking extension of illegal benefits. A mandamus cannot be issued to perpetuate an illegality committed by a public authority. The officers of the Endowments department may exercise statutory powers under the Act and statutory Rules to execute a legislative and statutory purposes and not to ensure liquidation of Endowments institutions. The suggestion by Sri Lakshminarayana Reddy that in view of the alleged favours conferred by the Endowments officials on certain encroachers, all encroachers should be treated alike such illegal favour, does not commend acceptance in law.

For all the aforesaid reasons, the writ petition is allowed. The respondents 1 to 3 and 6 to 8 are jointly and severally directed to ensure that the auction of the leasehold rights of all agricultural lands of the respondents 4 and 5 institutions in the possession or cultivation of any person or persons (other than a lawful cultivating tenant having a duly drawn up lease deed and the tenure of which is subsisting and will enure till the next crop year), is held within a period of 15 days from the date of receipt of a copy of this order, and leases are granted in accordance with the mandate of the Rules. The 2nd respondent shall ensure that this directive is carried out. If the petitioners are aggrieved

by any further inaction by the respondents 1 to 3 and 6 to 8 in this regard, they are at liberty to pursue appropriate remedies for violation of the orders herein.

The writ petition is accordingly allowed. There shall be no order as to costs.

_____

GODA RAGHURAM, J

26-09-2006

GRR